

1 belief based upon personal knowledge:

2 **NATURE OF THE CASE**

3 1. Plaintiffs bring this action individually and on behalf of all others
4 similarly situated seeking damages and any other available legal or equitable
5 remedies resulting from the illegal actions of FIRST PREMIER FUNDING LLC
6 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiffs on
7 Plaintiffs’ cellular telephones in violation of the Telephone Consumer Protection
8 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, thereby invading
9 Plaintiffs’ privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs,
12 residents of California, seek relief on behalf of a Class, which will result in at least
13 one class member belonging to a different state than that of Defendant, a Delaware
14 limited liability company. Plaintiffs also seek up to \$1,500.00 in damages for each
15 call in violation of the TCPA, which, when aggregated among a proposed class in
16 the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
17 Therefore, both diversity jurisdiction and the damages threshold under the Class
18 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. § 1391(b) because Defendant does
21 business within the State of California and a substantial part of the events giving
22 rise to Plaintiffs’ claims occurred in this District.

23 **PARTIES**

24 4. Plaintiff ABANTE ROOTER AND PLUMBING INC (“Abante”) is a
25 roofing and plumbing company residing located in Emeryville, California and is a
26 “person” as defined by 47 U.S.C. § 153 (39).

27 5. Plaintiff SIDNEY NAIMAN (“Naiman”) is a natural person residing
28 in Chico, California and is a “person” as defined by 47 U.S.C. § 153 (39).

1 numbers including, but not limited to, (315) 533-8234, (415) 287-6011, (631) 292-
2 2932, (646) 813-7886, (702) 751-8891, (855) 275-8887, and (631) 731-6222.

3 13. Defendant's calls constituted calls that were not for emergency
4 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

5 14. During all relevant times, Defendant did not possess Plaintiffs' "prior
6 express consent" to receive calls using an automatic telephone dialing system or an
7 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
8 227(b)(1)(A).

9 15. Defendant placed multiple calls soliciting its business to Plaintiffs on
10 their cellular telephones ending in -1080, -3803, -5903, -7511, -5154, -7210, -1083,
11 -5502, and -9210 from March 2017 through October 2018.

12 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
13 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

14 17. Plaintiffs received numerous solicitation calls from Defendant within
15 a 12-month period.

16 18. Plaintiffs requested for Defendant to stop calling Plaintiffs during one
17 of the initial calls from Defendant, thus revoking any prior express consent that had
18 existed and terminating any established business relationship that had existed, as
19 defined under 16 C.F.R. 310.4(b)(1)(iii)(B)

20 **CLASS ALLEGATIONS**

21 19. Plaintiffs bring this action individually and on behalf of all others
22 similarly situated, as members of the two proposed classes (hereafter, jointly, "The
23 Classes"). The class concerning the ATDS claim for no prior express consent
24 (hereafter "The ATDS Class") is defined as follows:

25 All persons within the United States who received any
26 solicitation/telemarketing telephone calls from
27 Defendant to said person's cellular telephone made
28 through the use of any automatic telephone dialing
system or an artificial or prerecorded voice and such

1 person had not previously consented to receiving such
2 calls within the four years prior to the filing of this
3 Complaint through class certification

4 20. The class concerning the ATDS claim for revocation of consent, to the
5 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined
6 as follows:

7 All persons within the United States who received any
8 solicitation/telemarketing telephone calls from
9 Defendant to said person’s cellular telephone made
10 through the use of any automatic telephone dialing
11 system or an artificial or prerecorded voice and such
12 person had revoked any prior express consent to receive
13 such calls prior to the calls within the four years prior to
14 the filing of this Complaint through class certification

15 21. Plaintiffs represent, and are members of, The ATDS Class, consisting
16 of all persons within the United States who received any solicitation telephone calls
17 from Defendant to said person’s cellular telephone made through the use of any
18 automatic telephone dialing system or an artificial or prerecorded voice and such
19 person had not previously not provided their cellular telephone number to
20 Defendant within the four years prior to the filing of this Complaint.

21 22. Plaintiffs represent, and are members of, The ATDS Revocation
22 Class, consisting of all persons within the United States who received any
23 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
24 telephone made through the use of any automatic telephone dialing system or an
25 artificial or prerecorded voice and such person had revoked any prior express
26 consent to receive such calls prior to the calls within the four years prior to the
27 filing of this Complaint.

28 23. Defendant, its employees and agents are excluded from The Classes.
Plaintiffs do not know the number of members in The Classes, but believe the

1 Classes members number in the thousands, if not more. Thus, this matter should
2 be certified as a Class Action to assist in the expeditious litigation of the matter.

3 24. The Classes are so numerous that the individual joinder of all of its
4 members is impractical. While the exact number and identities of The Classes
5 members are unknown to Plaintiffs at this time and can only be ascertained through
6 appropriate discovery, Plaintiffs are informed and believe and thereon allege that
7 The Classes includes thousands of members. Plaintiffs allege that The Classes
8 members may be ascertained by the records maintained by Defendant.

9 25. Plaintiffs and members of The ATDS Class and The ATDS
10 Revocation Class were harmed by the acts of Defendant in at least the following
11 ways: Defendant illegally contacted Plaintiffs and ATDS Class members via their
12 cellular telephones thereby causing Plaintiffs and ATDS Class and ATDS
13 Revocation Class members to incur certain charges or reduced telephone time for
14 which Plaintiffs and ATDS Class and ATDS Revocation Class members had
15 previously paid by having to retrieve or administer messages left by Defendant
16 during those illegal calls, and invading the privacy of said Plaintiffs and ATDS
17 Class and ATDS Revocation Class members.

18 26. Common questions of fact and law exist as to all members of The
19 ATDS Class which predominate over any questions affecting only individual
20 members of The ATDS Class. These common legal and factual questions, which
21 do not vary between ATDS Class members, and which may be determined without
22 reference to the individual circumstances of any ATDS Class members, include,
23 but are not limited to, the following:

- 24 a. Whether, within the four years prior to the filing of this
25 Complaint, Defendant made any telemarketing/solicitation call
26 (other than a call made for emergency purposes or made with
27 the prior express consent of the called party) to a ATDS Class
28 member using any automatic telephone dialing system or any

1 artificial or prerecorded voice to any telephone number
2 assigned to a cellular telephone service;

3 b. Whether Plaintiffs and the ATDS Class members were
4 damaged thereby, and the extent of damages for such violation;
5 and

6 c. Whether Defendant should be enjoined from engaging in such
7 conduct in the future.

8 27. As persons that received numerous telemarketing/solicitation calls
9 from Defendant using an automatic telephone dialing system or an artificial or
10 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting
11 claims that are typical of The ATDS Class.

12 28. Common questions of fact and law exist as to all members of The
13 ATDS Revocation Class which predominate over any questions affecting only
14 individual members of The ATDS Revocation Class. These common legal and
15 factual questions, which do not vary between ATDS Revocation Class members,
16 and which may be determined without reference to the individual circumstances of
17 any ATDS Revocation Class members, include, but are not limited to, the
18 following:

19 a. Whether, within the four years prior to the filing of this
20 Complaint, Defendant made any telemarketing/solicitation call
21 (other than a call made for emergency purposes or made with
22 the prior express consent of the called party) to an ATDS
23 Revocation Class member, who had revoked any prior express
24 consent to be called using an ATDS, using any automatic
25 telephone dialing system or any artificial or prerecorded voice
26 to any telephone number assigned to a cellular telephone
27 service;

28 b. Whether Plaintiffs and the ATDS Revocation Class members

1 were damaged thereby, and the extent of damages for such
2 violation; and

3 c. Whether Defendant should be enjoined from engaging in such
4 conduct in the future.

5 29. As persons that received numerous telemarketing/solicitation calls
6 from Defendant using an automatic telephone dialing system or an artificial or
7 prerecorded voice, after Plaintiffs had revoked any prior express consent, Plaintiffs
8 are asserting claims that are typical of The ATDS Revocation Class.

9 30. Plaintiffs will fairly and adequately protect the interests of the
10 members of The Classes. Plaintiffs have retained attorneys experienced in the
11 prosecution of class actions.

12 31. A class action is superior to other available methods of fair and
13 efficient adjudication of this controversy, since individual litigation of the claims
14 of all Classes members is impracticable. Even if every Classes member could
15 afford individual litigation, the court system could not. It would be unduly
16 burdensome to the courts in which individual litigation of numerous issues would
17 proceed. Individualized litigation would also present the potential for varying,
18 inconsistent, or contradictory judgments and would magnify the delay and expense
19 to all parties and to the court system resulting from multiple trials of the same
20 complex factual issues. By contrast, the conduct of this action as a class action
21 presents fewer management difficulties, conserves the resources of the parties and
22 of the court system, and protects the rights of each Classes member.

23 32. The prosecution of separate actions by individual Classes members
24 would create a risk of adjudications with respect to them that would, as a practical
25 matter, be dispositive of the interests of the other Classes members not parties to
26 such adjudications or that would substantially impair or impede the ability of such
27 non-party Class members to protect their interests.

28 33. Defendant has acted or refused to act in respects generally applicable

1 to The Classes, thereby making appropriate final and injunctive relief with regard
2 to the members of the Classes as a whole.

3 **FIRST CAUSE OF ACTION**

4 **Negligent Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227(b).**

6 **On Behalf of the ATDS Class and ATDS Revocation Class**

7 34. Plaintiffs repeat and incorporate by reference into this cause of action
8 the allegations set forth above.

9 35. The foregoing acts and omissions of Defendant constitute numerous
10 and multiple negligent violations of the TCPA, including but not limited to each
11 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
12 *47 U.S.C. § 227 (b)(1)(A)*.

13 36. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
14 Plaintiffs and the Class Members are entitled to an award of \$500.00 in statutory
15 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

16 37. Plaintiffs and the ATDS Class and ATDS Revocation Class members
17 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

20 **Act**

21 **47 U.S.C. §227(b)**

22 **On Behalf of the ATDS Class and the ATDS Revocation Class**

23 38. Plaintiffs repeat and incorporate by reference into this cause of action
24 the allegations set forth above.

25 39. The foregoing acts and omissions of Defendant constitute numerous
26 and multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
28 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

40. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiffs and the ATDS Class and ATDS Revocation Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

41. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

42. Pursuant to the Seventh Amendment to the Constitution of the United

1 States of America, Plaintiff is entitled to, and demands, a trial by jury.
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4 Respectfully Submitted this 31st Day of July, 2020.

5 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

6 By: /s/ Todd M. Friedman

7 Todd M. Friedman

8 Law Offices of Todd M. Friedman

9 Attorney for Plaintiffs
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